

JPFEW

RENEWED PETITION UNDER 37 CF R1.181

In re Application of:
Korsinsky, Gersh., et al..
Serial No. 10/672,561
Filed: September 29, 2003
Title: AUSERS WATER STORAGE

Petition renewed under 37 CFR 1,181 from action or requirements of the examiner in the ex parte prosecution of the present application, or in ex parte or inter parts prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court.

STATUTORY GROUND FOR RENEWED PETITION

The examiner issued a Non-Final Rejection on August 17, 2004; Which is domineering, which not related to the merits, and without providing, burden on examiner, sufficient evidence or reasoning basis (see MPEP2163.04), were the applicants' claims was rejected under 35 USC , 102(b) as being anticipated by McIntosh, Hanns and Toms, as a prior art reference that is not a statutory bar may be overcome by two generally recognized methods “: an affidavit under 37 CFR, 1.181, or an affidavit 37 CFR, 1.182” showing that the relevant disclosure is a description of the applicants own work as follows:

Under 35 USC, 102(e)/ 103, rejection may be overcome by the showing the reference is describing applicant's own work (from McIntosh, et al.);

Under 35 USC, 102(e), the reference reflects applicant established that he invented the subject matters disclosed in the reference , and the showing can be made by submission of an affidavit by the applicant under 37 CFR 1.132 and may be overcome examiners rejections:

Under 35 USC 102 (e) , McIntosh, et al. is a sub-combination in a combination claim of the reference does not establish that the patentee invented those elements, and may be overcome examiners rejections by applicant's submitted affidavit under 37 CFR 1.132 that stated that he not invented and not claims the gating means:

Under 35 USC, 102 (f), the reference reflects and affidavit Under 37 CFR 1.131 or CFR 1.132 a satisfactory showing applicant had actually invented the subject matters claimed in the application for overcome of the examiners rejections;

Examiners rejection may be overcome by references involved difference fields in a different purposes and structure and the reference was not reasonably to problem which the inventor was concerned because a person having ordinary skill in the art would not reasonably have expected to solve the problems;

The applicant filed an amendment on September 17, 2004 for overcome of the examiner's rejection by rephrasing the claims without new matters presenting (see MPEP 2163.07).

On July 8, 2005 was mailed The Notice of Noncompliant Amendment, on the domineering based on the failure of the applicant to provide a status identifier with each claim; which examiner failure to provide a status identifier of the noncompliant with each claim, and without any demonstrates review the basis for the rejections in view of the records as a whole, including amendments, numbers of the telephone

Communications, arguments and any evidence submitted by applicant.

Under 35 USC 112 para 1 must be examiner's fully respond to applicant's rebuttal arguments, and properly treat any further showing submitted by applicant. Under 35 USC 112 para.1, when a rejection is maintained, any affidavits relevant to the 35 USC 112 para.1, written description requirement must be thoroughly analyzed and discussed in the next Office action which was failure of the examiner.

Under MPEP 2163,I " to satisfy the written description requirements, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention", and specification as originally filed supports claims not originally in specification " adequate support" and rejected USPTO unwilling to find written descriptive support when the only description was found in the claims. It is now well accepted that a satisfactory description may be in claims or any other portion of the original filed specification. Which examiner failed to address the quality and specificity of particularity that was required in the description (how requirements description is enough).

Under MPEP 2163, A. is

" There is a strong presumption that an adequate written description of the claimed invention is present when applicant is filed. And (... " the PTO has the initial burden of presenting evidence or reasons why persons in the art would not recognize in the disclosure a description of the invention defined by the claims"), which examiner failed of presenting evidence.

The claimed invention described solely in terms of a method of its making coupled with its function and there is no described or art recognized correlation or relationship between the structure of the invention and its function, which under US law, a description that not render a claimed invention , which is as whole may not be adequately described the invention for the purposes of the written description requirements of 35 USC,112 under US law and 35 USC 103.; which was intentional violated by using administrative domineering policies, even without any presented evidences.

Written description issue examiner's rejections also was arise request by applicant to present requirements of the knowledge and level of the of the one skilled in the art standard and name of the person which was examined the invention would not permit to immediately envisage the product claimed from disclosed process; which examiner failed to present.

The above caused applicant on August 18, 2005 the applicants filed an 12 as examiner's required for overcoming the examiner's rejections because the discloser amendment, providing status identifiers for each claim, canceling claim1-3 and adding 4- revealed is allowed, which no new matters has present by examiner.

In the final rejection, mailed August 15, 20016, the examiner rejected the claims

4-12 under 35 USC 112 and claims 4,6,10 and 11 under 35 USC 102 (b) without presenting any evidence or reasons, which PTO has the initial burden of presenting any evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.

4-12 claims supported in the specification through express, implicit, or inherent disclosure. An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of the error in the specification, but also recognize the appropriate correction for overcome examiner's rejections, by examiner's not presenting contrary evidence or reasons.

The examiner's founded that amendment "lacked discussion of any of the specifics with respect to the claim language employed" as omission limitation can raise an issue regarding whether the applicant had possession of a broader, that variations where outside the stated purposes of the invention, more generating inventions". As a situation where the applicant's disclosure makes (i.e., narrow) understanding of a claim term is the an essential element of the applicant's invention.

The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art applicant was in possession of the invention.

The determining adequacy of written description for compliance with 35 USC, 112, para.1, (which the examiner has failed to compliance) the examiner has the initial burden of broad presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the prescription of the invention defined by the claims under strong presumption that an adequate written prescription of the invention is present in the specification as filed. Consequently rejection of an original claim for lack of written description should be rare. Each claim must be separately analyzed and given its broadest reasonable interpretation in light of and consistent with the written description, from understanding of the entirety of the application of what the applicant actually invented and intended to encompass by the claim. The absence of definitions or details for well-established terms should not be the basis of rejections.

The examiner failed present evidence of the required review the claims and the entire application, including the specific embodiments, figures, and sequence listings, to understand or lacked under and how applicant provides support for the various features of the claimed invention. And to determine the element that may be critical where those of skill in the art would require it to determine that applicant was or not was in possession of the invention, by compare the scope of the claim with the scope of the description to determine whether applicant has possession of the claimed invention. And should be included a determination of the field of the invention and field of art, and field and level of skill and knowledge of the art.

The examiner failed to present evidence or reasons that the why the specification alone or /and drawings alone as a 'written description' is not showing that the inventor constructed an embodiment or performed a process is not sufficient evidence of the

complicate that met all the limitations scope of the claim and determined that the invention would work for its intended purpose, even alone as one from many ways shown applicant is not in possession of the invention, as a base for the examiner's rejection of the claims.

The examiner failed present the amount of guidance or direction needed in the Relationship of Predictability of the Art and the Enablement Requirement [R-2} for present subject matters of the application.

The examiner failed present the definition that intend to use when examining the application, based on his understanding of what applicant intends it to mean, and explicitly set forth the meaning of the term and the scope of the claim in the Office action, which is burden on the Examiner under Requirements R-1.

In order to make the rejection, examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention (examiner must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure), and the specification disclosure which correspond in scope to those used in describing and defining the subject matters must be taken as being in compliance with the requirements of 35 USC 112, which was failed present by the examine, unless there is a reason to doubt the objective truth, which examiner also filed to present.

The determination was make in a domineering nature, based on examiner's opinion (see Office decision male dated: 07/20/07) without any present evidence and established any reasonable basis to question for claimed invention (MPEP 2164.05), which jeopardized possibility of the applicant to present persuasive argument supported by suitable proof were necessary which be encouraged applicant to demonstrate that the disclosure enables the claimed invention , without any advice to applicant for overcame examiner's rejections, including even advice to submit factual affidavits under 37 CFR 1.131/!,132 or declarations or cite references relating to the written description requirements which should have been considered.

A fundamental principal contained in 35 USC 112, (MPEP 2173.01, 2111.01) is that applicants are their own lexicographers. They can define the claims what they regard as their invention essentially in whatever terms they choose, such functional language, alternative or definition expressions or any style of expression or format of claims of the subject matters. Therefore, claim may not be rejected based of the language issues which application was rejected, even without presented any evidence or reasons.

Under 355 USC 112 should be presented an analysis as to why the language used in the claims is "vague and indefinite" and be included in the Office action which was failed, and which was very strong requested by applicant and rejected by examiner and PTO. Which applicant was jeopardized forced to submission of an amendment for

overcome of the PTO rejections. And in the next Office communication was a final rejection without any providing an explanation as to the action taken, examiner failed present enhance the clarity and completeness of the prosecution history records,(under The Supreme Court decisions)

Applicant used terms and words by dictionaries meanings, clear and concise definition in describing and defining the invention, which courts have recognized that it is desirable, which examiner rejected. Was not provided which should be provided reasons to support the conclusion of indefiniteness.

Examiner failed to presented evidence or reasons as not acceptability of the language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.

Examiner failed to point out how the claims is being interpreted and may give applicant an appreciation for relevant prior art or as amendment after final rejection, if the claims are redrafted to avoid the 35 USC 112 rejection

Examiner failed to present evidences or reasons, under obligations to specify, why the claims was not interpreted to invoke 35USC, sixth paragraph.

Examiner failed present analysis of the specification, drawings and other written materials and prosecution history in determining not sufficient structure has been disclosed to support a means-plus –function limitation and facts;(or USPTO failed present clearly enforce its requirements that the terms and phrases used in the claims not find clear support or antecedent basis in the written description); for one skilled in the art would recognize the structure for performing of the invention, or would not be able to identify the structure, material, or acts from description in the specification, drawings and written material or prosecution history, for satisfying 35 USC, First ,Second and Sixth Paragraphs, which jeopardized applicant's proper response and extortion additional substantial fees for saving his invention from be abandoned; eventually, intentional which traps his invention be abandoned.

Examiner carries the initial burden of proof failed present for showing that the prior art structure or step of the MacIntosh,Hanns, and Toms is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function.

Examiner failed Making a Prima Facie Case Equivalent which should provide an explanation and rational in the Office action as to why the MacIntosh, el al art element is an equivalent. Factors that support a conclusion that the MacIntosh, el al art element is equivalent, under MPEP,2182 , 2183.

Applicant was denied the opportunity during processing before the Office, under

MPEP, 2185, to amend the claims so that the claimed invention meets all statutory criteria for patentability to replace the claimed means plus function with specific structure, material or acts that are not in the prior art.

Under 35 USC, Sixth Paragraph which permits of the broad literal language claims limited to only those means that are "equivalent" to the actual means shown in specification, abstract, drawings, or prosecution history. Accordingly, examiner's decisions should be considered, but examiner failed considered.

The Background of the facts of the dismissing of the petitions, filed on September 15, 2006 and February 13, 2007 and mailed 7/20/2007 that requesting withdrawal of the Office Actions, mailed August 1, 2006 and November 30, 2006; And within two months from mail date of this decision, for any request submitting; And the application abandoning in view standard checking Box 1 (b) (Form PTOL - 1432) :

Box 1 checks: Applicant's failure to timely file a proper reply to the Office letter mailed on 15 August, 2006 without present any evidence supported or reasons;

Box 1 (b) checks; A proposed reply was received on 9/15/06, but not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection (without present of any evidence supported or reasons).

Which is actually is one from numbers scheme designed to confiscation inventions or confiscation personal intellectual property after the invention was published (this invention was published on 31 March 2005) from creative ordinary persons for constitutional obligation to promote the progress of science and useful arts.

The Decision, undersigned by level of the Director Technology Center 3700, mailed 07/20/07, which is actually an automatic stamping approval the administrative activities without any present evidences or explanation or reasons, and which actually is administrative confiscation of personal intellectual property and keeping received substantial fees from an ordinary creative person; or alternative be victimized by a complicate and very substantial fees and times and without future successes sucking processing.

Shows, Instead to promote the progress of science and useful arts by securing to authors and inventors exclusive rights, but rather by materially and emotionally victimizing of the creative persons by extortion fees, time, etc and eventually administrative nature confiscation of the theirs discoveries and writings by USPTO officer; Even, if under same interpretation of same understanding between US Congress and court decisions allowing.

Because, inventers rights are under protection of The Constitution of the United States and which the USPTO activities under Oath or Affirmation "... to ... the best Ability, protect, preserve and defend the Constitution of the United States, Under Secretary of Commerce for Intellectual Property and Director of USPTO

Therefore, that the petitioner is not challenging both the merits of the examiners rejections and the constitutionality of the procedure by PTO, and definitely is not subject to appeal to the Board of Patent Appeals and Interferences or to the court, but rather a subject of a clear violation of an or affirmation which must be bring to the USPTO director's attention for actins, and must be reported to US Congress; and maybe be investigated by the proper and by the independent authorities. Because, such as intentionally designed procedures for administrative confiscation personal intellectual properties from ordinary creative persons, and victimizing creative ordinary persons; requires a strong clear warning and advice for creative ordinary persons to consider the worth of their intellectual activities. Eventually, confiscation intellectual personal property must be considered inherently anti-promote science and arts and injurious to the public.

Dated: September 03, 2007
Brooklyn, New York

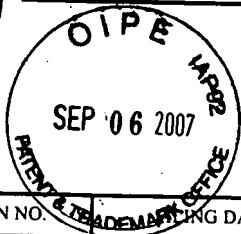
Respectfully submitted,



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APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,561	09/29/2003	Gersh Korsinsky		8839

7590
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BROOKLYN, NY 11219

08/08/2007

EXAMINER

PHILLIPS, CHARLES E

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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08/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Notice of Abandonment

Application No.

10/672,561

Examiner

Charles E. Phillips

Applicant(s)

KORSINSKY ET AL.

Art Unit

3751

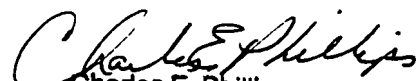
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 15 August 2006.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☒ A proposed reply was received on 9/15/06, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.

The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


Charles E. Phillips
Primary Examiner

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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7/20/07

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BROOKLY, NY 11219

In re Application of:
Korsinsky, Gersh., et al.
Serial No. 10/672,561
Filed: September 29, 2003

Title: A USERS WATER STORAGE

DECISION ON PETITIONS
UNDER 37 CFR § 1.181

This is a decision on the petitions filed on September 15, 2006 and February 13, 2007 under 37 CFR § 1.181. Petitioners request withdrawal of the Office Actions mailed August 1, 2006 and November 30, 2006.

The petitions are dismissed.

Background

The examiner issued a Non-Final Rejection on August 17, 2004. The applicants' claims were rejected under 35 U.S.C. § 102(b) as being anticipated by McIntosh, Hanns and Toms. The applicant then filed an amendment on September 17, 2004. The examiner found the amendment to be noncompliant based on the failure of the applicant to provide a status identifier with each claim. The Notice of Noncompliant Amendment was mailed on July 8, 2005. On August 18, 2005 the applicants filed an amendment, providing status identifiers for each claim, canceling claim 1-3 and adding claims 4-12. In the final rejection, mailed August 15, 2006, the examiner rejected the claims 4-12 under 35 U.S.C. § 112 and claims 4,6,10 and 11 under 35 U.S.C. § 102(b).

On September 15, 2006, the first petition under 37 CFR § 1.181 was filed. The petitioner stated, "the examiner failed to present evidence why a person skilled in the art would not recognize that the written description had possession of the claimed invention." On November 30, 2006 the examiner issued an advisory action, interpreting the September 15, 2006 petition as an amendment after a final rejection. The examiner found that the amendment "lacked discussion of any of the specifics with respect to the claim language employed" and therefore did not place the application in condition for allowance.

On February 13, 2007 a second petition was filed again requesting withdrawal of the final rejections. This petition raised various issues regarding the constitutionality and fairness of Patent and Trademark Office procedures.

Discussion

A review of the application indicates that the petitioners are challenging both the merits of the examiners rejections and the constitutionality of the procedures followed by the Patent and Trademark Office. With respect to petitions to the Director, relevant portions of 37 CFR § 1.181(a)(1) states:

- (a) Petition may be taken to the Director:
- (1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court

In accordance with 37 CFR §1.181(a)(1), an applicant may properly petition the Director only where the matter to be petitioned is not subject to appeal. The M.P.E.P. defines matters that are in fact subject to appeal in §1201. The relevant section of M.P.E.P § 1201 states:

The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a substantive nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of *prior art or other patentability issues*, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute.

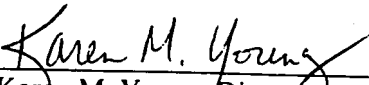
In the petition filed on September 15, 2006, the examiner's rejections under both 35 U.S.C. § 112 paragraph 1 and 35 U.S.C. § 102(b) were challenged. These challenges were based on prior art and other patentability issues which are related to the merits. According to the M.P.E.P §1201 issues regarding the merits are appealable and therefore not appropriately raised in a petition to the Director under 37 CFR §1.181(a)(1). In the petition filed on February 13, 2007, the petitioner challenges the constitutionality and fairness of the procedures followed by the USPTO. The procedures challenged by the petitioner are based upon the Constitution, the United States Code, the Code of Federal Regulations, case law and their subsequent interpretation by the court system and the USPTO. The Office does not possess the authority to modify or reinterpret these procedures. Therefore, the petitioner's challenges cannot be appropriately addressed by the current petitions.

Decision

For the foregoing reason, the relief requested by the petitioner will not be granted. The rejections under 35 U.S.C. § 112 and §102(b) as well as the petitioner's challenges to the constitutionality of the rejection of the claims are appealable matters and will therefore not be decided by petition.

The application is being forwarded to the Examiner Phillips of Art Unit 3751 for further processing. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITIONS DISMISSED.



Karen M. Young, Director
Technology Center 3700